

Warfaa v. Ali Legal Monitoring, Day 1

Monday, May 13, 2019

Stanford Law School International Human Rights & Conflict Resolution Clinic

This account summarizes what occurred on the first day of trial in the case of *Farhan Mohamoud Tani Warfaa v. Yusuf Abdi Ali*, No. 1:05cv701 (LMB/JFA). The trial is set to continue over the next three days in the Federal Courthouse in Alexandria, Virginia. The Center for Justice and Accountability invited the Stanford Law Human Rights & Conflict Resolution Clinic to conduct neutral trial observation and produce daily reports of the proceedings for interested parties, including the Somali diaspora.¹

District Judge Leonie Brinkema of the Eastern District of Virginia began the trial at 10:00 a.m. Counsel Benjamin Klein (DLA Piper) gave the Opening Statement for the Plaintiff, which focused on Mr. Warfaa's perseverance through trauma, abuse, and attempted extrajudicial killing perpetrated by Mr. Ali. Klein recounted how Mr. Ali came to Gebiley in 1987, accused the people of the village of seizing a government water truck, and returned two days later to arrest seventeen men, including Mr. Warfaa. Klein emphasized the torture Mr. Warfaa endured while in custody. During what would be his final interrogation, it is alleged that Mr. Ali shot Mr. Warfaa at point blank range: "**BANG! BANG! BANG!**," and left him for dead. Klein concluded by reminding the jury of the plaque over the door of the courthouse which reads, "***Justice delayed, justice denied.***" Mr. Klein stressed that there was no doubt this is a story of justice delayed, but it does not need to be a story of justice denied.

¹ This report is the product of the students of the Human Rights & Conflict Resolution Clinic and is not attributable to the Center for Justice & Accountability or Stanford Law School.

Counsel Joseph Peter Drennan next opened for the Defense. He claimed that his client, Mr. Ali, was indeed enlisted in the Somali National Army (SNA), and was a **“promising young soldier”** who served Somalia honorably, fought against the **“murderous Somali National Movement”** (SNM) guerillas and was trained by both the Soviet Union and American Army. Mr. Drennan argued that Mr. Warfaa was indeed likely tortured, but not by Mr. Ali. Rather, he claimed the Plaintiff would present a **“curiously detailed”** and **“scripted out case against [his] client”**; an act of vengeance against Mr. Ali and his clan. Mr Drennan concluded by stating, **“[t]here is a hidden agenda here.”**

The Plaintiff’s first witness, Ambassador Robert Gosende, took the stand at 12:29 p.m. His testimony straddled the one-hour lunch break and ended at 3:39 p.m. Ambassador Gosende, a self-described **“Somalia junky”**, first worked in Somalia in 1968 as a cultural affairs officer and was named Special Envoy to the country in 1993. In the intervening period, he served as the State Department’s Deputy Area Director and Area Director of Sub-Saharan African Affairs, where his portfolio included Somalia. Because of the deep knowledge of Somali history, politics, and culture he gained through this work and his postings in Somalia in the late 1960s, early 1970s, and early 1980s, Ambassador Gosende was certified as an expert witness. His testimony drew from an expert report that he first prepared for this case in 2005, based on his review of United States government records documenting human rights issues in Somalia, diplomatic cables, and a document on Somali refugees referred to as the Gersoni Report.

The Ambassador’s testimony began with an overview of the history and geopolitics of the Siad Barre regime. According to this testimony, Mohamed Siad Barre became the leader of Somalia in 1969 through a military coup. **“Whatever was going on was supported by the Russians,”** recounted Ambassador Gosende. According to his further testimony, in the days

following the coup, Russian ships docked off the coast of Mogadishu and Russian soldiers came ashore for leave. Like all Somali leaders, Barre was anxious to control the northern port of Berbera, which is the only source of foreign income in Somalia, as the point of export for the Somali herding industry. Most of the people of Somalia were pastoral nomads; they moved to raise their herds, which went to market in Berbera. The Ambassador explained that the area surrounding Gebiley, where the events at issue in this case took place, is strategically significant because it lies along one of the main roads followed by herders for the seasonal migration.

Ambassador Gosende emphasized the numerous human rights abuses committed under the Barre regime. Asked to characterize the human rights situation under this regime, he said that it was **“terrible.”**

The Ambassador then responded to further questions on Somali culture and history. Asked to explain clans, he described them as the social, familial groups that divide Somalia. Every Somali, he said, can trace their lineage back to a single ancestor. These groups are not referred to as “tribes” because there is linguistic unity in Somalia. The Isaaq are the predominant clan in the northwest. Barre was a member of the Marehan clan.

In the period following the coup, there was a great shift in Somalia according to Gosende. Prior to the coup, there were about twelve people on death row in the country. Over the course of several weeks, Barre ordered them executed by firing squad, one by one, at a stadium in the capital and published pictures of the bullet-riddled bodies in newspapers. People were shocked, but the message, Ambassador Gosende asserted, was clear: **“If you oppose us, this is what we are capable of.”** The executioners were members of the SNA. Ambassador Gosende qualified that this violence transcended clan lines, stating that **“[t]his began long before 1982, against people other than the Isaaq.”**

After Barre's rise to power, the Constitution ceased to have any serious meaning, according to the Ambassador. Barre disbanded the Parliament, the Supreme Court, and political parties, and forbade political activity by anyone who was not a member of his regime. All media fell under the government's control. Following the coup, the United States State Department's judgment about Somalia's independent judiciary was that it had ceased to exist.

The civil war centered on the former British Somaliland, as members of the Isaaq clan and others in the region grew restive under the dictatorial regime. The SNM formed in response to the oppression of the Isaaq clan as a political and military movement. The SNM focused on taking control of Burao and Hargeisa, and for periods did control them, but could not compete with the SNA's superior firepower. In the end, the SNA used its air force, which the SNM lacked, to indiscriminately attack civilian populations in the north of the country and to launch indiscriminate artillery attacks. **"There was no other place in the world where a country was using jet aircraft to slaughter human beings. . . [t]hey were treating the local civilian population as if they were the enemy,"** the Ambassador testified.

The Defendant's counsel began cross-examination at 3:12 p.m. After clarifying that the Ambassador was testifying in a personal capacity, and not as a representative of the United States government, Drennan's questions seemed geared towards putting the United States' involvement in Somalia in a wider geopolitical context. He asked if the United States was interested in Berbera. The Ambassador expressed skepticism, noting that Berbera is a shallow water port.

The cross-examination's focus then turned to the SNM. First, counsel probed whether the Ambassador had discussed attacks by the SNM on Ogadeni refugee camps in Somaliland. The Ambassador hadn't. Counsel then challenged the Ambassador's characterization of the SNM as **"ragtag,"** wondering if a force trained by the Soviets in Ethiopia that was able to capture and hold

regionally important cities, Hargeisa and Burao, could be “ragtag.” The Ambassador answered that he meant this characterization of their forces to be in comparison to the SNA.

The questioning then returned to the issue of tension between the Ogadeni and the Isaaq. The Ambassador responded that this line of questioning was missing the major issue: the Barre regime’s human rights abuses. **“I have stood at the edge of the killing fields outside Mogadishu [clarified on re-direct to be Hargeisa] looking at the white bones rising up from the ground.”**

At 4:01 p.m., Plaintiff’s Counsel Kathy Roberts (Center for Justice & Accountability) called Plaintiff Farhan Mohamoud Tani Warfaa to the stand. Mr. Warfaa began by identifying himself, then stating that the Defendant, known as “Colonel Tukeh,” came to Gebiley as a Colonel in the SNA. The Plaintiff then stood to identify the Defendant by pointing at him and saying, **“He is there.”**

Mr. Warfaa proceeded to describe his life as the youngest of nine siblings, herding camels in the northwest of Somalia. He described how, when he was seventeen, Mr. Ali and his deputy, Mr. Musmar and the 5th Battalion rounded up the men and boys of the village and accused them of stealing a water truck. Plaintiff’s counsel provided a demonstrative example of such a truck, which Mr. Warfaa said looked identical to the ones he saw in his town, except it was a different color. Mr. Warfaa alleged that, at the end of his speech, Mr. Ali stated that, if the persons responsible weren’t identified, **“I will kill you one by one, and it will become a story that some people used to live here.”**

Two or three days after his arrest, Mr. Warfaa claims he and sixteen other members of his family were awakened and walked at gunpoint to a tree, from which they were put in military vehicles and transported to an army base in Gebiley. Plaintiff identified a photograph of a red-roofed structure as Mr. Ali’s office at the military base. Next to this structure, Mr. Warfaa alleged

he and his family were kept in a cell like that of a shipping container with brick walls and a sheet metal roof. He testified that he was allowed outside to use the bathroom once daily and otherwise had to urinate into a pipe.

Mr. Warfaa claimed that, on over twenty occasions, soldiers would take him out of his cell and tie him and others in a “MiG” position, while Mr. Ali watched and gave the orders. Mr. Warfaa described this position as having one’s hands and feet tied together behind the back, arching his body so much that he had difficulty breathing and was unable to close his mouth. **“You would be face down in the sand and often get sand in your nose,”** Mr. Warfaa claimed. This abuse made him nearly unconscious, and once released, he couldn’t even take two steps. He would then be taken to Mr. Ali’s office and be interrogated about the missing water truck.

On the last night of being interrogated in Mr. Ali’s office after being tied in the MiG position, Mr. Warfaa was handcuffed. He described how there was a fight because SNM fighters attacked the base. Mr. Ali was moving a lot, on the radio, walking in and out. He was ordering his soldiers to attack over the radio, sometimes looking out the window; a lot of guns sounded in the area and then suddenly attack ended. Warfaa explained that, **“he looked at me, kicked me, looked at me, removed his pistol, then he shot at me. I don’t know the number of times he fired, but at the hospital I saw five bullet wounds.”** At this point in the testimony, Mr. Warfaa apologized to the jurors saying **“when I’m talking about that event my emotions change.”**

Mr. Warfaa recounted his final moments of consciousness, where soldiers covered him in a blanket. Mr. Warfaa remembered hearing, **“take him.”** He woke up on the roof of a truck, which drove him to his father, who paid a ransom for his return. His father’s nieces took him to the public hospital in Hargeisa the next morning, where he spent two and a half or three months until he recovered. Mr. Warfaa claims he left the hospital and spent three nights in a hotel, and on May 31,

1988, after the SNM captured the city, was arrested and taken to prison in Hargeisa, where he was held until the end of 1989. In that prison, he noted there was no physical punishment, but there was widespread hunger. After his cousin bribed the guards for his release, he escaped to a refugee camp in Ethiopia.

Court adjourned at 5:58 p.m., before the end of Mr. Warfaa's testimony. The proceedings are set to continue on Tuesday, May 14th at 9:30 a.m., when Mr. Warfaa is scheduled to complete his direct examination and stand for cross-examination.